IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5801 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BAI SHAKILA W/O. GAMBIR ISHWARCHHARA

Versus

POLICE COMMISSIONER OF AHMEDABAD

Appearance:

MR RD GAGDEKAR for Petitioner

MR AJ DESAI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/02/2000

ORAL JUDGEMENT

#. Heard Mr.R.D.Gagdekar, learned advocate for the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1,2 & 3.

#. The detention order dated 27-5-1999 passed by

respondent No. 1 - The Commissioner of Police, Ahmedabad City against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-C interalia indicate that in all six prohibition cases were registered against the petitioner at Sardar Nagar police station in between 12-1-97 to 26-5-99. That in each case, Indian made Foreign liquor was seized from the possession of the petitioner / detenu. That out of 6 cases, 5 cases are pending for trial in the Court while the sixth case is pending for investigation. Over and above, that two witnesses on assurance of their anonymity have given statements dated 22-5-99 and 26-5-99 about the bootlegging activities of the petitioner and have narrated the alleged incidents dated 11-5-99 and 17-5-99 respectively. That on the basis of the said material, the respondent No. 1 - The Commissioner of Police, Ahmedabad City as the detaining authority has come to the conclusion that the petitioner / detenu is bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind inasmuch as the detaining authority has failed to consider the availability of less drastic remedy like claiming of cancellation of bail granted to the petitioner in 3 registered cases though available under Section 437(5) of the CrPC and thereby, the subjective satisfaction reached by the detaining authority has been vitiated and has rendered the impugned order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention

order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that in the last but one para of the grounds of detention, the detaining authority has observed that petitioner is in remand custody in respect to criminal case registered vide C.R. No : 5372 / 99 at Sardar Nagar Police Station while the bail is granted to the petitioner in all other cases registered against her. It is further observed that by passage of time, when the petitioner is produced before the Court, the petitioner is likely to apply for bail and having got herself released on bail, is likely to continue her anti social activities. The said observation of the detaining authority itself suggests that the detaining authority has passed the impugned order merely on basis of the apprehension rather than based on the facts. Furthermore, the said observation also suggests that the detaining authority has failed to consider the aspect of claiming of cancellation of bail as available under Section 437(5) of CrPC. Under the circumstances, it is difficult to uphold the said order.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 27-5-99 passed by respondent No. 1 - The Commissioner of Police, Ahmedabad City against the petitioner is hereby quashed and set aside. The petitioner - BAI SHAKILA W/O. GAMBIR ISHWAR CHHARA is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 1-2-2000 [A.K.Trivedi, J.]

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